STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
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LESLIE A. NEWMAN
COMMISSIONER

BULLETIN

TO: All Workers' Compensation Insurance Companies and Insurance Producers Licensed in Tennessee

FR: Leslie A. Newman, Commissioner LAN
Department of Commerce and Insurance

RE: 2008 Tennessee Public Acts, Chapter 1041

DT: December 21, 2009

The purpose of this Bulletin is to address certain questions raised by the November 10, 2009 Bulletin ("previous Bulletin") on this same subject and to clarify the Department's position on the effects of 2008 Tenn. Pub. Acts ch. 1041 in its capacity as administrator of the Assigned Risk Plan.

Currently, T.C.A. § 50-6-113(f)(1) states, in pertinent part, that a sole proprietor or partner in the construction industry shall not be required to carry workers' compensation coverage on himself. 2008 Tenn. Pub. Acts ch. 1041, effective December 31, 2009, states that a sole proprietor or partner working as an intermediate contractor or subcontractor must obtain workers' compensation coverage on himself. Only those partners, sole proprietors, and LLC members doing work directly for the property owner are exempt from having to obtain said coverage.

The Department interprets this change in the law to mean that a sole proprietor, partner, or limited liability company member ("LLC member") who had not previously been required to have coverage on himself must now obtain coverage on himself. The Department, through administration of its Assigned Risk Plan must offer coverage to these individuals. The Department has determined that in order to purchase coverage through the Assigned Risk Plan, each one of these individuals must complete the election form attached as the appendix to this Bulletin or a similar form provided by the Carrier that clearly evidences the individual's election of coverage. The Department wishes to make clear its position that failure of a sole proprietor, partner, or LLC member to obtain such coverage without having met an exemption, is in violation of

2008 Tenn. Pub. Acts ch. 1041 and could subject such person to penalties by the Department of Labor and Workforce Development. Further, any person required to obtain coverage under the law as of December 31, 2009 and who fails to properly complete an election form, will not be covered under any policy issued by the Assigned Risk Plan. It is also the Department's position that any carrier who has issued a minimum premium or other construction related policy under the Assigned Risk Plan to cover the subcontractors, employees, or other workers of the sole proprietor or partner electing not to obtain coverage or pay premium on himself may deny any claim of that sole proprietor or partner arising out of or relating to his own injury.

The previous Bulletin, which outlined steps the Department has taken in an effort to foster an efficient transition from current law to 2008 Tenn. Pub. Acts ch. 1041, was meant to pertain to all types of construction related policies currently issued under the Assigned Risk Plan as well as new and renewal business effective on or after December 31, 2009.

Should you have any questions concerning the issues or positions set forth in this Bulletin, or its application, please feel free to contact the Workers' Compensation area of the Policy Analysis Section of Tennessee Insurance Division at 615-741-0472.

LAN/lnw

Appendix A

Certification of Election of Workers Compensation Insurance assigned by the Tennessee Workers Compensation Insurance Plan (TWCIP)

The purpose of this Certification is to comply with the administrative Bulletin, issued by the Commissioner for the State of Tennessee, Department of Commerce and Insurance on November 10, 2009 and any amendments thereto that relate to the implementation of 2008 Tennessee Public Acts, Chapter 1041, effective on December 31, 2009.

Pursuant to the Bulletin, as it may be amended, all persons that are subject to the provisions in 2008 Tennessee Public Acts, Chapter 1041, and engaged in the construction industry, including sole proprietors and partners, and members of Limited Liability Companies (LLCs) are required to procure workers compensation insurance coverage on themselves, as well as their employees, must affirmatively "elect" to be covered on any workers compensation insurance policy assigned by the TWCIP. This election is required to obtain such insurance in the TWCIP and remains in effect until cancelled. All such persons must certify that they intend to elect such coverage that will be relied upon by the TWCIP and all insurance carriers working with the TWCIP.

PLEASE NOTE: FAILURE TO AFFIRMATIVELY "ELECT" SUCH COVERAGE ON THIS FORM MAY RESULT IN YOUR FAILURE TO COMPLY WITH TENNESSEE LAW.

SOLE PROPRIETOR or PARTNER or LLC Members – Election and Certification

I, _____(printed name), certify that I am a __sole proprietor or __partner or LLC member of _____(business name) with the Federal Employer Identification Number (FEIN) of _____ or Social Security Number (SSN) of _____, if no FEIN number, and do hereby elect to be covered under the workers compensation insurance policy issued by _____ (Insurance Company Name, *if known*), in accordance with the Tennessee Workers Compensation Insurance Plan's (TWCIP's) Plan, as amended, and all rules and guidelines related thereto.

I, _____(printed name), certify that the above information provided in this form is true and correct.

_____(signed) _____(dated)